

§ 3.452

except as to those cases covered by § 3.458(b) and (c). In determining the basis for special apportionment, consideration will be given such factors as: Amount of Department of Veterans Affairs benefits payable; other resources and income of the veteran and those dependents in whose behalf apportionment is claimed; and special needs of the veteran, his or her dependents, and the apportionment claimants. The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionnee.

[44 FR 45940, Aug. 6, 1979]

§ 3.452 Situations when benefits may be apportioned.

Veterans benefits may be apportioned:

(a) If the veteran is not residing with his or her spouse or his or her children and a claim for apportionment is filed for or on behalf of the spouse or children.

(b) Pending the appointment of a guardian or other fiduciary.

(c)(1) Where an incompetent veteran without a fiduciary is receiving institutional care by the United States or a political subdivision, his or her benefit may be apportioned for a spouse or child, or, except as provided in paragraph (c)(2), for a dependent parent, unless such benefit is paid to a spouse ("as wife" or "as husband") for the use of the veteran and his or her dependents.

(2) Where a married veteran is receiving section 306 or improved pension and the amount payable is reduced under § 3.551(c) because of hospitalization, an apportionment may be paid to the veteran's spouse as provided in § 3.454(b).

(Authority: 38 U.S.C. 501(a); 5307; 5503(a))

(d) Where additional compensation is payable on behalf of a parent and the veteran or his or her guardian neglects or refuses to contribute such an amount to the support of the parent

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the additional compensation will be paid to the parent upon receipt of a claim.

CROSS REFERENCES: Institutional awards. See § 3.852. Disappearance of veteran. See § 3.656. Reduction because of hospitalization. See § 3.551. Penal institutions. See § 3.666.

[26 FR 7266, Aug. 11, 1961, as amended at 27 FR 6974, July 24, 1962; 40 FR 21724, May 19, 1975; 44 FR 45940, Aug. 6, 1979; 66 FR 48560, Sept. 21, 2001; 68 FR 34542, June 10, 2003]

§ 3.453 Veterans compensation or service pension or retirement pay.

Rates of apportionment of disability compensation, service pension or retirement pay will be determined under § 3.451.

[26 FR 7266, Aug. 11, 1961]

§ 3.454 Veterans disability pension.

Apportionment of disability pension will be as follows:

(a) Where a veteran with spouse, or child is incompetent and without legal fiduciary and is maintained in an institution by the United States or any political subdivision thereof, \$25 monthly will be paid as an institutional award to the Director of a Department of Veterans Affairs medical center or chief officer of a non-Department of Veterans Affairs institution for the use of the veteran, and the balance will be paid to the dependent or dependents. If the veteran has no spouse, or child but has a dependent parent, apportionment will be in accordance with § 3.451.

(b)(1) Where the amount of section 306 pension payable to a married veteran under 38 U.S.C. 1521(b), as in effect on December 31, 1978, is reduced to \$50 monthly under § 3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between \$50 and the total amount of pension payable on December 31, 1978.

(Authority: 38 U.S.C. 5503(a))

(2) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to \$60 monthly under § 3.551(d) or (e)(2), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of